

1 to find out. And that answered my question that obviously
2 it was not done at the highest reaches of the Mass Media
3 Bureau.

4 JUDGE CHACHKIN: But obviously by having Ms. Cook
5 call rather than having some individual call you were
6 attempting to somehow exert some pressure on the staff and
7 on your behalf, on behalf of Rainbow, did you not?

8 THE WITNESS: If by pressure you mean was it
9 somebody that would get a response, yes.

10 JUDGE CHACHKIN: A response to what?

11 THE WITNESS: Her call.

12 JUDGE CHACHKIN: It was to get a response to your
13 application, wasn't that what your purpose was?

14 THE WITNESS: No, no, that was not my purpose. If
15 had been my purpose, I would have asked her could you call
16 over there and see if they -- if they will tell you they
17 will reverse that thing. And I did not say that. I asked
18 her to find out what was going on over there.

19 JUDGE CHACHKIN: Well, what do you mean "what was
20 going on"? There wasn't anything pending at the time. It
21 was a status inquiry since there was no thing pending. The
22 decision had been rendered.

23 So what do you mean by "what was going on"?

24 That's what I am having difficulty understanding.

25 THE WITNESS: Okay, what was going on, who made

1 the decision. Was this a decision made in the chief of the
2 Bureau's office? Was this something that he was aware of
3 because it was contrary to -- had the Commission changed the
4 laws suddenly? This is certainly something that was
5 different from anything they had ever done.

6 JUDGE CHACHKIN: And you don't consider this more
7 than a status inquiry, to find out who was responsible for
8 the decision and why it was different than something that
9 had ever been done?

10 THE WITNESS: Well, I didn't ask her to find out
11 why it was different from something that had ever been done.
12 I mean, you are asking me what was in my mind, not what I
13 said to her. What I said to her is find out what the heck
14 is going on.

15 And, no, I didn't consider it different from a
16 status call, but I also, had I considered it different,
17 still wouldn't have felt that the proceeding prevented it.

18 JUDGE CHACHKIN: Well, you know she was a third
19 party, and you were aware of the letter to Daniels.

20 THE WITNESS: Yeah, and, you know, to be honest
21 with you, the letter from Daniels, when I saw it in '91, I
22 read it, shrugged about it, and put it in the file. I did
23 not consider that an active part of my thought process in
24 this.

25 JUDGE CHACHKIN: All right, go ahead, Mr. Eisen.

1 Do you have any questions before we go to
2 redirect, anything further questions on the basis of mine?

3 MR. BLOCK: Yes, I do. One question

4 JUDGE CHACHKIN: Go ahead.

5 BY MR. BLOCK:

6 Q Why didn't could you call yourself instead of
7 asking Ms. Cook to call?

8 A I did.

9 Q Why didn't you call yourself?

10 A I did. I thought she would get a call back
11 faster, and she did.

12 MR. BLOCK: Your Honor, I neglected to move into
13 evidence my document, and I would like to do that at this
14 time. Limited to just the particular paragraph that I
15 referred Ms. Polivy to which is on page 10, the third full
16 paragraph which begins, "When asked if anyone." For the
17 limited purpose I move the admission of Staff Exhibit No. 1.

18 JUDGE CHACHKIN: All right. Without any
19 objection?

20 MR. EISEN: No, I have the same objection before
21 about putting in excerpts into the record.

22 JUDGE CHACHKIN: Again, I said if there is
23 anything else in this document which relates to that
24 subject, you can certainly put it in.

25 MR. EISEN: Well, Ms. Polivy has testified with

1 regard to matters that she did explain were incorrect. Some
2 of those matters address questions that are raised in this
3 report. And I don't think that it advances anything and I
4 think it's unfair to allow just one sentence or one
5 paragraph of this entire document to go into the record, to
6 stand for the proposition that Ms. Polivy in some way was
7 aware that there was an inconsistency or an error in this
8 document and didn't explain it; didn't contact the person
9 who prepared it to say that there was something wrong,
10 especially in light of the testimony she's provided.

11 JUDGE CHACHKIN: Are you talking about the summary
12 of the investigation?

13 MR. EISEN: Yes.

14 JUDGE CHACHKIN: Again, if you want to cite to
15 something in here that you feel is relevant or something
16 that she referred to, I'll certainly consider it. But I am
17 not going to receive this entire document for the truth of
18 the matters stated in 15 pages just like that.

19 If you have some parts of this that you feel are
20 relevant to her testimony, I certainly will consider it, but
21 all I have is the proffer of a particular page, and that was
22 what? What page was that?

23 MR. BLOCK: That was page 10, paragraph three.

24 JUDGE CHACHKIN: Just one paragraph, page 10,
25 paragraph three.

1 MR. EISEN: I wasn't even away that it was the
2 full paragraph. I thought it was just the first sentence.

3 MR. BLOCK: No, I asked her to read the whole
4 paragraph.

5 MR. EISEN: You questioned her on the entire
6 paragraph, not just on the first sentence?

7 MR. BLOCK: That's correct.

8 JUDGE CHACHKIN: All right. As I know, the only
9 other question that was asked was if there was anything in
10 the document where she indicated that -- where she
11 corrected.

12 MR. EISEN: Right.

13 JUDGE CHACHKIN: That statement concerning what
14 the nature of the whole --

15 MR. EISEN: So if I understand your ruling, what
16 you are ruling, Your Honor, is that if there are other parts
17 of this document that were corrected by Ms. Polivy, that
18 those portions could also go into the record?

19 JUDGE CHACHKIN: I didn't say that.

20 MR. EISEN: Well, that's what I understood you to
21 say.

22 JUDGE CHACHKIN: If you want to question her about
23 particular portions of this document, and assuming there is
24 no objections, then I will make a ruling. I am not going to
25 receive something unless there is a basis, questions have

1 been asked about it. Questions were asked about this
2 particular paragraph. If there are other portions you want
3 to ask her about on redirect, then I will rule on it,
4 whether that should be admitted or not. I will not receive
5 the entire document which deals with many, many subjects,
6 and this is the investigator's report.

7 MR. EISEN: Well, then, maybe Mr. Warwick should
8 be called as a witness.

9 MR. BLOCK: He's dead.

10 MR. EISEN: Mr. Andary.

11 THE WITNESS: We asked for him.

12 MR. EISEN: Right, and that was rejected.

13 JUDGE CHACHKIN: All right, I receive page 10,
14 paragraph three of Staff Exhibit 1, that portion.

15 (The document referred to,
16 having been previously marked
17 for identification as Staff
18 Exhibit 1, was received into
19 evidence, but only page 10,
20 paragraph three.)

21 MR. BLOCK: That concludes our cross-examination.

22 JUDGE CHACHKIN: All right. Redirect.

23 MR. EISEN: Thank you, Your Honor, a couple of
24 questions.

25 REDIRECT EXAMINATION

1 BY MR. EISEN:

2 Q You testified earlier, Ms. Polivy, to very
3 specific questions that you did not particularly mention the
4 ex parte rule when you discussed with Mr. Pendarvis and Mr.
5 Stewart the possibility of the meeting in late June 1993.

6 Was there a reason that you had that you did not
7 specifically refer to the ex parte rules when you had those
8 discussions?

9 A No. I was aware of what they were asking with
10 respect to the objections that were filed and I responded
11 and they both knew as far as I could see that the reason
12 they were asking a question.

13 Q Did you think you were under any obligation to
14 specifically raise the ex parte rules with them when you
15 talked about having the meeting?

16 A Only if I believed that there was some ex parte
17 impropriety about it would I have been under an obligation
18 to raise the ex parte rule, no.

19 Q When you were interviewed by the Inspector
20 General, prior to that interview did you review any
21 documents?

22 A No, I did not.

23 Q You also responded to Judge Chachkin with regard
24 to --

25 MR. EISEN: Judge Chachkin, I certainly don't want

1 to mischaracterize what you said -- mentioned that this
2 proceeding might be ordinary in some way. And my
3 recollection, Your Honor, is that you said that in making
4 these contact with the Commission, the July 1, 1993 meeting,
5 that this was in some way related to an ordinary proceeding,
6 and you were trying to get the Commission to do something in
7 an ordinary proceeding, that it might not --

8 JUDGE CHACHKIN: I never said that.

9 MR. EISEN: Well, that was my recollection.

10 Well, let me ask the witness this.

11 BY MR. EISEN:

12 Q Did you consider it to be an ordinary proceeding?

13 A Nothing about this proceeding has been ordinary.

14 It's gone on since 1984. It has been up and down on appeal
15 three times.

16 Q Yes, but in particular before the July 1, 1993
17 meeting, did you think that the proceedings involving the
18 application for extension of time were ordinary pro forma
19 proceeding at the FCC?

20 A I did think they were, yes.

21 Q And did you think at the time it was taking to
22 resolve those requests was ordinary as well?

23 A No, I think the time was most extraordinary, and
24 unconscionable. I could not conceive as to why it was
25 taking so long to act on what I considered rather

1 uncomplicated informal objections.

2 Q I would like to show you a copy of Press's
3 February 25, 1991 decision for reconsideration, which you
4 have already reviewed and answered some questions about.
5 And I ask this question because I don't think the record is
6 completely clear on it.

7 Do you believe that that particular pleading is an
8 informal pleading?

9 A Yes, I did and I do.

10 Q The petition for reconsideration specifically, Ms.
11 Polivy, is what I am referring to.

12 A Yes.

13 Q What is the basis for your belief that the
14 petition for reconsideration was an informal pleading?

15 A Well, the definition of a formal opposition given
16 in the Commission's rules is that in 1.1202(e) says that
17 "The caption and the text," little (i) says, "The caption
18 and the text of a pleading made it unmistakably clear that
19 the pleading is intended to be formal opposition or an
20 informal complaint."

21 First of all, the pleading itself makes it clear
22 that there are no substantive arguments in the pleading
23 entitled "Petition for Reconsideration." There is an
24 Appendix A and it says in the face of the pleading, or in
25 the body of the pleading, that this is -- they are appending

1 their informal objection that they had previously filed
2 because they had inadvertently -- on Footnote 1 they
3 inadvertently failed to notice the February 12th public
4 notice of the grant of Rainbow's application, so that the
5 petition for reconsideration was in its text no more than a
6 cover to accompany the informal objection.

7 Secondly, no petition for reconsideration under
8 the Commission's precedent lies to an informal objection.

9 Thirdly, Press did not have standing under the
10 Commission's rules to file a formal objection.
11 Consequently, by taking this cover document entitling it a
12 petition for reconsideration, and then putting their
13 informal objection which was quite thick on it, they
14 couldn't suddenly convert this into a formal document
15 because it couldn't be a formal opposition, or a formal
16 complaint.

17 Q Was that petition for reconsideration an
18 authorized pleading?

19 A No, it was not.

20 The Commission's rules and precedent don't permit
21 the filing of petition for reconsiderations to informal
22 objection, and we cited in our response the rules, including
23 the Redwood Microwave standard for the fact that the Redwood
24 Microwave Association and Max Leon at 61 FCC 2nd 442 and 68
25 FCC 2nd 114, respectively, the Commission stated that

1 informal objections do not have standing to file petitions
2 for reconsideration.

3 Q You also mentioned in conjunction to the
4 applications for extensions of the Rainbow construction
5 permits a \$200 amount.

6 Could you be more explicit about what were you
7 referring to?

8 A During the pendency of the court proceedings
9 involving the comparative of Rainbow's application and the
10 review of the Commission's minority broadcast policy there
11 was an intervening event, and that is that the Commission
12 started to impose fees on certain applications, including
13 petition -- applications for extension of time. And the fee
14 for filing a Form 307 application for extension request was
15 \$200.

16 And at the time they were requiring us to file
17 these extensions while we were in court. I thought they
18 were doing it because they wanted the extra money, because
19 of the pro forma application, and that was the \$200
20 application fee that I was objecting to.

21 Q Ms. Polivy.

22 A I think that these have gone up, by the way.

23 Q I think we can all agree that there has been a
24 significant amount of controversy concerning what happened
25 here under this issue. And I know that your position in

1 your testimony today is that you believed that neither you
2 violated nor did the Commission violate any ex parte rules.

3 But knowing what you know about this case now,
4 would you have done the same thing had you realized what was
5 going on here?

6 MR. BLOCK: Objection, that's beyond the scope of
7 the cross.

8 JUDGE CHACHKIN: Sustained.

9 MR. EISEN: Your Honor, I think that goes to the
10 witness's intent.

11 JUDGE CHACHKIN: It has nothing to do with the
12 witness's intent at the time, what she would do now.
13 Sustained.

14 MR. EISEN: Okay, I have nothing further.

15 JUDGE CHACHKIN: Anything on the basis of
16 redirect?

17 MR. BLOCK: Yes, I do, Your Honor, have a couple
18 of questions.

19 RECROSS-EXAMINATION

20 BY MR. BLOCK:

21 Q Ms. Polivy, in response to questions by Mr. Eisen
22 on redirect concerning Press's petition for reconsideration,
23 I believe you testified that in your view this is not a
24 formal opposition within the meaning of the Commission's ex
25 parte rules because for one reason Press did not have

1 standing; is that correct?

2 A I gave several reasons.

3 Q I understand that. I am saying one of the reasons
4 is that --

5 A Yes.

6 Q -- Press did not have standing.

7 Am I not correct that that issue has been resolved
8 contrary to review on several occasions?

9 A I don't know what your reference is to, but the
10 Commission's rules say that in order to have standing that
11 you must be a party to the proceeding, which an informal
12 objector is not, or you must be a person whose interests are
13 adversely affected.

14 Now, the Commission has held in many instances
15 that someone objecting to the grant of someone else's
16 application as competitive does not have -- is not a party
17 aggrieved.

18 The rule of standing, if you are talking about
19 Article III standing in court, is a different matter
20 entirely. That is not the Commission -- Article III
21 standing is not the standing standard that is used in the
22 Commission's rules.

23 Q You have advanced that argument to the Commission,
24 did you not?

25 A They didn't address it. We advanced the fact that

1 Press didn't have standing, and they subsequently rejected
2 it.

3 Q It has been rejected by the Commission.

4 A I am not -- I'm sorry. You would have to show me
5 where -- I am not prepared to say that. But they certainly
6 did not reject Press's pleading on that ground.

7 Q That's correct.

8 A But I don't know whether they rejected it in the
9 sense that you're --

10 Q And am I also correct that you advanced the same
11 view to the Court of Appeals in the Press v. FCC case?

12 A You mean subsequent to all of this?

13 Q Yes, that's correct.

14 A Yes, we did.

15 Q And am I also correct --

16 A -- Article III standing, not FCC standing.

17 Q That the Court rejected the argument as well?

18 A I do not believe the Court addressed the question
19 of FCC standing. I believe the Court addressed the Article
20 III standing, but it would not have made my argument at the
21 time any different.

22 MR. COLE: Your Honor, I don't want to argue with
23 the witness but I just want to refer to the Court and state
24 for the record that I have reference to Footnote 6 of the
25 Court of Appeals opinion in Press v The FCC, which reads as

1 follows:

2 "Rainbow contends that Press as intervenor has no
3 standing to challenge the Commission's actions regarding its
4 permit. The argument has no merit. As the FCC properly
5 noted, nothing in its precedent supports that
6 interpretation," there is a citation to 9 FCC Record at 2844
7 and to Note 24, "and we necessarily recognized Press's
8 standing in our disposition of its earlier mandamus
9 petitions. Indeed, the initial cancellation of Rainbow's
10 permit occurred in the process of granting Press's
11 objections." And there is a cite to page 15 of the joint
12 appendix.

13 BY MR. COLE:

14 Q Now, Ms. Polivy, you also said, as I recall,
15 during redirect that the rules, and I am going to ask you to
16 restate this because I didn't quite understand this. That
17 the FCC's rules do not permit an informal objector to file
18 for reconsideration.

19 Is that what your testimony was?

20 A I said to you that --

21 Q It was to Mr. Eisen. It was not to me. I am just
22 trying to clean it up.

23 A I noted that the FCC precedent both in Redwood
24 Microwave Association and Max Leon says that an informal
25 objector does not have standing to seek reconsideration, and

1 those are the two precedents.

2 A party without standing may file a formal
3 objection under the Commission's rules if it was timely put,
4 which this wasn't.

5 Q Am I not --

6 A But cannot thereafter elevate that to a status of
7 a person with standing to file a petition for
8 reconsideration, and that was the basis upon which -- that
9 was one of the bases on which we felt that you could not
10 transmogrify, excuse the word, an informal objection into a
11 formal opposition, in addition to the fact that the face of
12 your pleading made it clear that all that pleading that was
13 titled a petition for reconsideration was, was a
14 resubmission of the informal objection because you were
15 late.

16 Q Let's take that in various parts.

17 First, am I not correct that the cases you are
18 citing involve situations where an informal objector had
19 filed an informal objection. The informal objection had
20 been disposed of. And reconsideration of the action
21 disposing of the informal objection was at issue.

22 Am I not correct that that is the situation in
23 those cases?

24 MR. EISEN: Objection, Your Honor, and the basis
25 of my objection is simply this. We can argue legal

1 precedent and whether there was standing or there wasn't
2 standing. But the question is what she believed at the time
3 she saw the petition for reconsideration, and she has
4 testified to what she believes.

5 JUDGE CHACHKIN: Well, that is the question I
6 have. I mean, she has cited precedent, but I don't know if
7 she is citing precedent as to what she believes now or when
8 she viewed these documents at the time she made this
9 determination.

10 MR. EISEN: Well, I think that's a proper
11 question.

12 THE WITNESS: Well, that's what we filed at the
13 time, Your Honor.

14 JUDGE CHACHKIN: Filed when?

15 THE WITNESS: Our objection, or opposition to
16 Press's objection for reconsideration.

17 JUDGE CHACHKIN: Was filed when?

18 THE WITNESS: Was filed on March 12, 1991.

19 JUDGE CHACHKIN: March 12, 1991.

20 All right, now what difference does it make what
21 her current position is or is not?

22 MR. COLE: No, no, I am not asking about her
23 current position. I am asking about just am I not correct
24 in my understanding that those cases that she is talking
25 about on the stand right now involved a different factual

1 predicate than what is involved here.

2 And this goes, Your Honor, if I might, this goes
3 to the question of what I would characterize as imprecision,
4 and Ms. Polivy's repeated reference to Press's petition for
5 reconsideration of its informal objection.

6 MR. EISEN: Well --

7 MR. COLE: Excuse me, excuse me, Mr. Eisen. I am
8 making as statement here and you can address it afterwards.

9 MR. EISEN: Thank you.

10 MR. COLE: There was no petition for
11 reconsideration of an informal objection, contrary to Ms.
12 Polivy's repeated statements because in fact no action had
13 been taken on Press's informal objection because Press's
14 informal objection was already late the day that the
15 Commission's public notice -- acceptance of the application
16 was issued because it had already been granted the day the
17 first notice came out. So no one as a practical matter
18 could have filed a pre-grant objection, petition,
19 opposition, whatever you want to call it, with respect to
20 that application.

21 Accordingly, the petition for reconsideration was
22 clearly within the rules under 1.106 as far as I am aware.
23 But my point on this is that Ms. Polivy, by repeatedly
24 referring to a petition for reconsideration of an informal
25 objection, I believe, misstates what the status of the

1 record was at that point.

2 MR. EISEN: Your Honor, not only is that error
3 imprecise and prejudicial, it doesn't reflect what Ms.
4 Polivy testified to.

5 Ms. Polivy, pursuant to the cross-examination that
6 Mr. Cole asked, later clarified that it was petition for
7 reconsideration of the grants, of the extension requests.
8 So I think the record will show that that's actually what
9 she testified to. And there was a misunderstanding that
10 came in response to Mr. Cole's earlier questions.

11 I don't think that we will find that her testimony
12 is that ultimately is a petition for reconsideration of the
13 informal objections.

14 JUDGE CHACHKIN: I believe, Mr. Cole, that's what
15 occurred. She did correct it, and there were a number of
16 questions asked.

17 MR. COLE: No, absolutely, Your Honor. There is
18 testimony in the record which is consistent with what I have
19 just stated.

20 My point is that up to that point a fair amount of
21 cross-examination to get her to say that, and even now on
22 redirect we have heard again about the petition for
23 reconsideration of informal objections. And I just want to
24 make sure the record is clear of what was involved here.

25 MR. EISEN: Your Honor, I think the record is

1 clear now, and that's Mr. Cole's characterization of Ms.
2 Polivy's testimony.

3 JUDGE CHACHKIN: Well, I don't recall what Ms.
4 Polivy said in answer to your question, Mr. Eisen, whether
5 it was reconsideration of a formal objection or
6 reconsideration of the --

7 MR. EISEN: Ultimately, I believe she said the
8 latter.

9 JUDGE CHACHKIN: I know she did in reference to
10 Mr. Cole's questions, but I don't recall what transpired in
11 your questions.

12 In any event, let's proceed. The record is clear
13 on this point.

14 MR. COLE: Thank you, Your Honor.

15 THE WITNESS: Was there a question?

16 MR. COLE: There is no pending question.

17 I have no further questions.

18 MR. BLOCK: I have a couple of questions.

19 RECROSS-EXAMINATION

20 BY MR. BLOCK:

21 Q Staying with the reconsideration petition and
22 turning to -- do you have in front of you, look at paragraph
23 number four, and I'm going to read the second sentence of
24 that for the record here.

25 "The objection raises substantial and material

1 questions concerning Rainbow's basic and comparative
2 qualifications to remain a permittee," and it goes on to
3 explain that there is good cause under Section 1.106(c)(1)
4 to give reconsideration at this time.

5 Your characterization of the document focused on
6 the fact that it was incorporating the informal objection
7 that had occurred prior to the filing of the
8 reconsideration.

9 Did you consider the request for reconsideration
10 of the basic permit grant as something separate from the
11 reconsideration of the extension application?

12 A The permit wasn't -- the only thing that was --

13 Q Construction permit.

14 A -- filed was -- the only thing that was addressed
15 here was the extension of the construction permit. I think
16 that you will find in our opposition to Press's petition for
17 reconsideration that was filed on March 12, 1991, we did
18 address the fact that apparently they were trying to reopen
19 the construction permit grant itself, which was not a proper
20 way to go about it.

21 And we also noted in there, since you mentioned
22 1.106, that while it governs reconsideration, 1.106(b)
23 permits reconsideration to be so only by a party to the
24 proceeding or any other person whose interests are adversely
25 affected by the Commission's action, but requires that

1 nonparties, such as Press, state with particularity the
2 matter in which -- the manner in which the person's
3 interests are adversely affected by the Commission's
4 challenged action, which they never did, which is why we
5 thought -- we said that while they cited 1.106, they did not
6 cite the entirety of 1.106 that made it clear that they did
7 not have standing to file a petition for reconsideration.

8 Q And I would ask specifically what the Commission
9 rejected in footnote -- what was the footnote? Twenty-
10 three? Twenty-four of the Commission decision where it said
11 that there is a -- that Press is an aggrieved party as a
12 broadcaster in the area.

13 MR. EISEN: But, Your Honor, what is the purpose
14 of counsel testifying with regard to what the Commission
15 said. The purpose is Ms. Polivy's understanding of the rule
16 at the time that that rule was at issue, at the time that
17 these events took place in June of '93.

18 JUDGE CHACHKIN: If that is an objection, I will
19 sustain. I will sustain the objection. It's irrelevant.
20 We are interested in whether she intentionally violated ex
21 parte rules.

22 BY MR. BLOCK:

23 Q Your reading of the reconsideration petition, in
24 your reading of the reconsideration petition you excluded
25 the possibility, did you not, that Press was legitimately

1 seeking reconsideration of the grant of the construction
2 permit and seeking that the whole permit be revoked; is that
3 correct?

4 MR. EISEN: Objection.

5 JUDGE CHACHKIN: Is this is all subsequent to the
6 meeting that Ms. Polivy itself --

7 MR. BLOCK: No, no, this is --

8 MR. EISEN: The petition for reconsideration was
9 involved prior to the meeting as to --

10 JUDGE CHACHKIN: All right.

11 MR. EISEN: My objection was based on the word
12 "legitimate" that was used in the question. I don't know
13 what that means.

14 JUDGE CHACHKIN: All right, rephrase it.

15 MR. BLOCK: Okay. Just for Your Honor's
16 reference, let's go through the timing here.

17 We are speaking here about January -- February
18 1991, the petition for reconsideration filed by Press some
19 time after the fifth extension was granted over Press's
20 objection.

21 JUDGE CHACHKIN: All right.

22 MR. BLOCK: And Press's filing -- this is the
23 reconsideration which is the basis of all of -- or
24 referenced in all of the letters, Daniels letter and other
25 letters.

1 JUDGE CHACHKIN: Right.

2 MR. BLOCK: And other pleadings.

3 BY MR. BLOCK:

4 Q You do not consider the reconsideration petition
5 to deal with the question of whether or not Press was
6 attacking the underlying construction permit grant granted
7 to Rainbow in 1984?

8 A If Press were attacking the underlying
9 construction permit granted in 1984, they would have been
10 gross untimely doing so. They would have had to seek
11 rescission of the construction permit.

12 The only thing before the Commission was a request
13 for extension of time to construct.

14 To the extent that Press was trying to make this
15 into a different kind of proceeding, it would have been
16 improper to do so in the context of this application. They
17 would have had to ask the Commission to institute some other
18 kind of proceeding, which they would have to do under the
19 Commission's rules in a separate pleading.

20 Q And you disagree with the finding of the -- strike
21 that.

22 And Press does exactly that in the remainder of
23 the paragraph that we were referring to, paragraph four,
24 where it explains why it didn't have an opportunity to raise
25 those objections prior to this time.

1 But it is actually seeking that, is it not?

2 MR. EISEN: Your Honor, the "is it not" at the
3 very end as opposed to argument makes that into a question.
4 It's very difficult to follow a question like that when
5 counsel makes a statement a long and rather complex one, and
6 then says "is it not."

7 If Ms. Polivy understand the question, she can
8 answer it, and I'll withdraw my objection. Otherwise, I
9 would like it rephrased.

10 THE WITNESS: I will try.

11 MR. EISEN: Well, are you sure you understand the
12 question?

13 THE WITNESS: Well, I think I do. Mr. Block will
14 tell me if I didn't.

15 The Commission's rules permit the filing of
16 informal objections anytime up until grant of an
17 application. You can say anything in the world in that
18 informal objection if you think that gives you a basis to
19 object. That doesn't make it valid or invalid. What makes
20 it valid or invalid is whether the Commission acts upon it
21 or adopts it, and takes some action based thereon.

22 Press made many allegations that we responded to
23 in one way or another procedurally and substantively.
24 Sometimes by pointing out that they were not the kind of
25 allegations or the kind of actions that would appropriately